

FINAL
Signed:

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on February 15, 1999 at
3:25 P.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. John C. Bohlinger (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 353, SB 398, SB438, SB323,
2/11/1999
Executive Action: SB 438 DO PASS

HEARING ON SB 353

Sponsor: SEN. EVE FRANKLIN, SD 21, Great Falls

Proponents: Carson Stregge, Montana People's Action (MPA)
Donetta Klein, Coping With Block Grants
Kim (tape too unclear to get last name), Private
Citizen
Doris Ellis, Project Uplift
Paula Erwin, MPA
Billie Salois, MPA
Joe Grooms, Private Citizen
Sarah McNamara, FAIM
Wendy Young, Working for Equality & Economic
Liberation
Colleen Murphy, National Association of Social
Workers
Sharon Hoff, Montana Catholic Conference
Linda Kovac, Catholic Diocese, Great Falls/Billings
Rebecca Moog, Montana Women's Lobby
Lyrae Becker, MPA
Betty Waddell, Montana Association of Churches
Michelle Hines, Carroll College student
Kimberly (tape too unclear to get last name), MPA
Audrey Wagner, Private Citizen
Shelley Icenhower, Welfare Advocacy of Montana

Opponents: Hank Hudson, Department of Public Health & Human
Services
Katherine Buckley-Patton, FAIM Coordinator,
Beaverhead County

Opening Statement by Sponsor:

SEN. EVE FRANKLIN, SD 21, Great Falls, said requirements came along with Montana's participation in the welfare reform process, particularly in the Families Achieving Independence in Montana (FAIM) program. Sanctions would be imposed on individuals who, for a number of reasons, were unable or unwilling to comply with some requirements of the program. She said now that the program had been in place for awhile, it served no useful purpose to sanction the tools which were used to allow people to maintain themselves within the community. **SEN. FRANKLIN** said **SB 353** was a brief, straight-forward bill which asked that termination of restriction of food stamps, Medicaid coverage or child care benefits not be included in the sanctions. The only thing appropriate to be sanctioned would be a cash grant. She suggested the Department of Human Health & Human Services (DPHHS) might testify as the process for the new requirement for sanctions had gone on, the real issue was not unwillingness to comply, but individual inabilities. Rather than a punitive approach, it would be better to have a case management focus.

She said if someone had been sanctioned once, and continued to have difficulties complying, there were real problems. The other new section in the bill asked DPHHS to look at the whole issue of how sanctions could be used in a more progressive way, i.e. help people comply and move along in the process. She said she had visited with Hank Hudson, who concurred DPHHS had been asking those same questions. Rather than leave it to the nebulous world of rule-making, she suggested they should be given some direction to deal with individuals who chose not to comply by putting them out of the picture. The focus should be on those who needed public support, and because of the problems they had, it would be good to consider that population.

Proponents' Testimony:

Carson Stregge, Montana People's Action (MPA), said they met with DPHHS in November, 1997, to raise some issues and concerns around the welfare program. The Department did not make any of the changes MPA wanted, but suggested they meet again in December of that year. They did, and at that time began negotiating the Welfare Recipient's Bill of Rights. She said Montana was the first state to have that and MPA felt important changes had been made in the welfare system; however, it did not change the elimination of the sanctions of food stamps and Medicaid.

{Tape : 1; Side : A; Approx. Time Counter : 7.3}

Donetta Klein, Coping with Block Grants, read her written testimony **EXHIBIT** (phs37a01).

Kim (can't understand because tape is unclear), Private Citizen, said two years ago she was unemployed, homeless, in a homeless shelter along with her two daughters and without transportation. She had to set up a lot of appointments to meet with people and was sanctioned because she did not return a worker's call, even though she had not received the call. She received a letter which sanctioned her food stamps, Medicaid and cash benefits; in fact, her cash benefits went from over \$460 to \$183 and her food stamps decreased significantly also. She said she went through a serious depression, which was very hard because her children depended on her. At that time, there was nowhere to go. She said she no longer was sanctioned, but she was an advocate for those who were. She asked support for **SB 353**.

Doris Ellis, Project Uplift, said they were welfare advocates and she had two years' experience in working with welfare reform and recipients. They had a close partnership with the Office of Public Assistance (OPA) office in Cascade County and both worked very hard to keep recipients from getting sanctioned. Because

what happened, they lost the basic ability to take care of themselves. She explained their county did not have effective relief for homeless women and children, and when they were sanctioned they often lost their Medicaid medications, which were necessary to help them function. **Ms. Ellis** said these women also needed the child care, and as an example, said clients had finally "pulled it together", i.e. got their appointments and got everything worked out so they could fulfill their family investment agreement. Then they were sanctioned and lost their child care; therefore, they had no way to get to their GED or job without someone to watch their children. She maintained food stamps, Medicare and child care were basic needs that families needed to care for their homes, and she saw no basic purpose in removing these survival tools. Sanctioning was very subjective because it varied from one worker to the next, even though there were general guidelines. People needed to know the proper rules and guidelines.

{Tape : 1; Side : A; Approx. Time Counter : 16.0}

Paula Erwin, Montana People's Action (MPA), said she was sanctioned and it affected her family in a very bad way. She said she did her best to comply with the rules, i.e. rode her bike because she had no car, lined up a temporary job, etc. She lost her job, was evicted, lost Medicaid and child care, which meant she could not look for another job. She said she had three children who could not care for themselves when she was working.

Billie Salois, Montana People's Action (MPA), said when welfare reform first came to Lake County, she received a letter which said she was sanctioned, but it gave no reason. She said her rent was \$450 and her check \$550, so she ran to the welfare office to tell her worker she wanted to receive benefits. The worker told her there was nothing to be done about the sanction so she should talk to the Child Support Services. She called them, but they said they had not received a letter from her, though **Ms. Salois** was sure they did. She discovered she had returned it to the wrong address, i.e. used a California address instead of Missoula. Child Support Services called California and found the letter so the sanction was reversed. She said when she began working at McDonald's on the Flathead Reservation, she discovered most of the people to whom she talked had been sanctioned, and some even worse. She asked support for **SB 353** so food stamps, child care and Medicare would not be affected.

Joe Grooms, Private Citizen, said he was testifying on behalf of his daughter who had mental problems. When she went to get food stamps, she missed an appointment so was denied them for six months. She went to work at a temporary job, but her handicaps

included not being able to remember dates, so he felt the six months' sanction was quite extreme. He said not everyone erred on purpose and explained some had difficulties in driving or remembering and getting to appointments on time. He maintained when she went to work, that job was more important to her than keeping the appointment because it was a day-at-a-time job. Food stamps kept her going.

{Tape : 1; Side : A; Approx. Time Counter : 23.1}

Shelley Icenhower, Montana People's Action (MPA), read testimony from a case manager in the FAIM program, Sarah MacNamara, who was unable to personally attend the hearing. **EXHIBIT (phs37a02)** Her duties included sanctioning participants who were not in compliance with FAIM requirements. In general, recipients referred to her for case management were motivated to change their economic situation because they wanted to work and become economically self-sufficient. However, many of those families had barriers to employment, which strict sanction rules did not allow her to address. The program's emphasis was on immediate employment, regardless of whether the family had unaddressed barriers or lacked marketable skills. There was no information about families who were sanctioned but did not reapply for assistance, but it seemed possible they just moved away. In fact, she had worked with one such family and felt the family would have been better served by attentive case management which would have addressed their barriers. She said sanctioning was a subjective process where families were not treated equally. She maintained families who had multiple barriers were more likely to be sanctioned than those who became employed without the assistance of a case manager, i.e. those who needed the most help were the least likely to receive it. She urged support for the bill.

{Tape : 1; Side : B; Approx. Time Counter : 0}

Wendy Young, Working for Equality and Economic Liberation (WEEL), read her written testimony **EXHIBIT (phs37a03)**.

Colleen Murphy, National Association of Social Workers (NASW), affirmed DPHHS had done many things to make welfare reform succeed in Montana, and those she supported; however, she was against the kinds of sanctioning which had been happening. She shared she had asked North Dakota's Director of Public Assistance how they dealt with sanctions. The Director said the first time an appointment was missed, or uncooperation exhibited, there was a 30-day leave to explain the actions, i.e. no sanction took place, though it was counted as a sanction. The second time could result in a sanction of cash assistance up to six months

and the third time resulted in the case being closed and the family declared ineligible. She then compared Montana's sanctioning policy in which child care, cash assistance, food stamps and Medicare were affected, and stated Montana's policy was unseemingly harsh. She said the vast majority of former AFDC recipients went on welfare to get food stamps and medical benefits, i.e. they needed support in order to work. Food and medical care were more than bread and a shot; in fact, they were security, comfort, stability and a base from which to grow. She highly supported **SB 353**.

Sharon Hoff, Montana Catholic Conference, was unable to attend so her written testimony **EXHIBIT (phs37a04)** was read by **Linda Kovar, Catholic Diocese, Great Falls**, who also expressed support for the bill.

Rebecca Moog, Montana Women's Lobby, said **SB 353** was good, humane and the right thing to do. She urged support for the bill.

Lyrae Becker, Montana People's Action, stated the stories heard in previous testimony were valid and affirmed sanctions were not opportunities for positive things but exacerbated the conditions of poverty. She encouraged doing a study on what happened to families who were sanctioned, as well as Committee appreciation and respect for folks who were present to testify on **SB 353**.

Betty Waddell, Montana Association of Churches, said they sought to speak to issues, through the Gospel, where peace and justice were absent. She thought the concerns in the bill was one issue where justice was absent, because when there was exclusion from abundance of life, which God intended for all, justice was denied. She recounted criticisms of the sanctions system were heard and she believed DPHHS had plenty of opportunities to investigate and change the situations; however, they had not done so. She said the limits in the bill were reasonable, and explained basic rights and needs, particularly food, should not be denied or used as reward and punishment. Also, denying Medicaid could result in losing children to injury or illnesses, and without child care benefits, FAIM participants were in jeopardy. She asked the Committee to pass **SB 353**.

{Tape : 1; Side : B; Approx. Time Counter : 9.5}

Michelle Hines, Carroll College Student, read her written testimony **EXHIBIT (phs37a05)**.

Kimberly (tape too garbled), Montana People's Action, said she supported the bill.

Audrey Wagner, Private Citizen, said she supported **SB 353**.

Shelley Icenhower, Welfare Advocacy of Montana (WAM), said she, as the coordinator for WAM, supported the bill and urged the Committee to do the same.

Opponents' Testimony:

Hank Hudson, Department of Public Health and Human Services (DPHHS), said they opposed the bill, though not rabidly. He agreed much thought was put into it and was presented well by the sponsor. The reasons for DPHHS' opposition was the issues relating to food stamps, child care and Medicare were more complicated and less amenable to simple solutions than presented. Also, this type of solution violated the process by which FAIM was developed and changes made through a large number of people deliberating carefully over complex issues. He said if this bill did not pass, they would end up in the same spot; in fact, in December, he wrote a letter to the chairperson of the Advisory Council which asked her to make sanctions the area of consideration. They recognized these programs evolved and changed rapidly. The AFDC program had been in effect for 60 years and FAIM only two; therefore, it was moving quickly. Their caseload had decreased by 50%, which meant the Department needed to be capable of rapid change; however, they wanted to be able to do that through a process which allowed them to think carefully through the issues.

The reasons for sanctions included a social agreement between individuals and the state. The individuals asked their community for financial support through government-run programs, and the state had an obligation to provide money, nutrition and child care so people with children would not go without having their basic needs met. Changes instituted two years ago said the recipient needed to respond by doing everything possible to become self-sufficient and leave the welfare program. That was different because for 60 years, recipients had received a check with no further personal responsibility. Welfare reform said that had to stop so sanctions became part of the personal responsibility, and were an effort to respond to a mutually shared obligation. That was a huge change in thought; in fact, after 60 years of doing it the other way, it would take more than two years to make the conversion.

Another change was FAIM, which was supposed to look like work, i.e. the person was to experience the same things as someone on a job. With work came benefits such as pay and health care coverage, while failure to work caused consequences. Both

federal and state laws required sanctions to be part of this process, although states had a great deal of flexibility.

Mr. Hudson went on to inform the Committee about another change, explaining now a recipient could receive benefits for only 60 months, i.e. it was an effort to make people realize there was no more entitlement. They were doing no one a favor by allowing people to continue not to succeed until they hit the 60 months, because then there was a crisis, even greater than now. There were also federal work requirements, which meant if the people were not working, Montana lost its block grant. Therefore, sanctions were used in order to ensure the block grants were not lost. He declared no one enjoyed the prospect of taking poor people's money away.

{Tape : 1; Side : B; Approx. Time Counter : 17.3}

He said everyone who entered the system had written mutual obligations, such as sanctions when they failed to meet their part of the agreement. There were rules which warranted a sanction, i.e. if a person could not show good cause for missing a meeting or not complying. Before anyone was sanctioned, the case was reviewed by the worker and at least three people in the office. They would then sign the document (a plan of improvement to ensure the sanction would not happen again) and determine which other alternatives existed. The county director did an administrative review and there was a fair hearings process, during which time people's benefits could continue. However, they were expected to re-negotiate when they were out of compliance. He explained children's Medicaid was never sanctioned, and if an adult was sanctioned and lost the Medicaid, it would be returned and retroactive to the start of the month as soon as they re-negotiated the Family Investment Agreement (FIA).

As for food stamps, no one could get more because the cash was reduced, i.e. a 25% reduction in the new food stamp amount was bigger because they had less cash. He agreed there were different ways to look at food stamps.

The child care was not sanctioned, so to speak, because child care was received as per the FIA. When a person was out of compliance and no longer had a FIA, there was nothing for which to purchase child care. He pointed out Montana was one of only 15 states which never took the entire Temporary Assistance to Needy Families (TANF) grant away from the family. He suggested North Dakota's policy was very severe, in that they were given six months and then a full family sanction.

Mr. Hudson cautioned the problems in the bill included the language which said child care would not be sanctioned. If the bill passed in that form, it would be possible for a family to do nothing on the FIA, yet receive payment for child care. At the same time, there would be people who were working at below 150% of poverty on a waiting list for child care; therefore, the result could be working people were going without child care while the unemployed would receive it. He suggested there could be some middle-ground solutions to this problem, in that child care could be provided to the point they re-negotiated their FIA or for the hours they were working, even if they did not have a FIA.

He related people who had or had not been sanctioned or who had left the program represented a lot of hard work, determination and success. In any given month, 4-5% of their caseloads were sanctioned, which meant 95-96% did not. That figure should be recognized. At any given time, 6-8% of their caseload carried sanctions; therefore, over 90% of the people who were FAIM participants were not part of the sanctions process. It was possible to get through the process without receiving a sanction.

{Tape : 2; Side : A; Approx. Time Counter : 0}

He continued to explain the biggest reason for sanctions was people just did not show up; however, once they did and were in front of the county director and workers to explain their case, they were given many, many chances. Of the 50 cases which had gone all the way to a hearing, 43 were decided in favor of the Department. Though their caseload had dropped in half, and it could be assumed the most difficult clients remained on the caseloads, the percentage of sanctions had not increased. He attributed that to the Department's learning to be more observant and careful about the kinds of needs people had.

He expressed a desire and goal to be heading toward no necessity for sanctions, but finding a better way. The Department needed to continue to involve many people in its design, so its broad support could continue. **Mr. Hudson** explained DPHHS laid out a proposal to invest \$30 million of welfare money into child care and another \$2 million or so into intensive case management, which was needed by people who received multiple sanctions. People needed positive, rather than negative, reinforcement.

He reiterated he did not support **SB 353** because he would rather work the problems through a different process; however, some of the concepts in the bill could be utilized.

(Hank Hudson drew most of his remarks from **EXHIBIT (phs37a06)**)

Katherine Buckley-Patton, FAIM Coordinator, Beaverhead County, said in 1996, her county was one of the first counties to enter welfare reform; therefore, they were into their third year. "Sanction" was a difficult word which gave a hot, red-letter approach; however, it was a reality because life included sanctions. Everyone dealt with actions and reactions, with choices and consequences, and the focus of welfare reform was to make welfare change an established pattern and look like life itself. She suggested choices and consequences were part of the way people learned and were used as tools to discover what worked and what did not. When something did not work, it impacted the person, so other ways were found to do things. **Ms. Buckley-Patton** contended when someone who walked through her doors became a success, it was a success for Montana; therefore, it was in the best interest for the persons on both sides of the desk to find the best ways to success. She declared Medicaid was never withheld for children, and once a sanctioned adult agreed to comply, he or she was eligible for Medicaid immediately. By the same token, food stamps were never completely removed, but were reduced by 25% from what the increase would be.

She said sanctions had to be overturned if there was reason for good cause; however, good cause had to make good sense. Someone failing to either call or show up for an appointment for the fourth or fifth time, constituted good cause. When the sanction letter was sent out, the reason was always explained. Also, the letter contained two options for the participant: (1) If there was good cause for not complying, let the FAIM coordinator know; (2) If the participant disagreed with the Department's decision, he or she should explain why and file for a fair hearing, the process of which was fully explained. Benefits could then continue to be received; i.e. failure to get back in touch with the FAIM coordinator was a choice.

She then addressed the idea sanctions occurred only because of missed appointments by saying their computer system allowed for a great number of sanction codes. However, there was not room to include each and every code used for sanctioning. She explained they might use the code which referred to missing a meeting, but that was probably not the singular reason for sanctioning. She denied the idea there was a pattern in sanctions, explaining they were based on the individual FIA and individual situation where the sanction occurred. She maintained the Department did not adamantly oppose **SB 353**, because many of the things promoted in the bill existed; however, they needed to give the changes some time to work. She reiterated sanctions were results of individual choices and consequences, and could be used as tools for learning and becoming successful.

{Tape : 2; Side : A; Approx. Time Counter : 9.9}

Questions from Committee Members and Responses:

SEN. DON HARGROVE asked the circumstances of the reversal of **Billie Salois'** sanctions. **Shelley Icenhower** said she had to return to the office, meet with her caseworker again and provide the documentation the letter was indeed sent to the wrong place.

SEN. HARGROVE suggested there was not that much disagreement between DPHHS and the clients; rather, it seemed to be in implementation, rules and training. He wondered if the Department had prepared something to insert into the bill, which met all the common objectives. **Hank Hudson** said they did.

SEN. DOROTHY ECK said earlier discussions of sanctions revealed there was a high percentage of people who would fail to get off FAIM or find employment; therefore, they would be more likely to be sanctioned. In reality, these people had a mental illness. **Hank Hudson** said issues of mental illness or domestic violence needed to be the central focus of FIA; however, it was important to remember being mentally ill was not synonymous with being incapable of working. Therefore, they expected people to aggressively pursue the treatment of their mental illness so they could work. The FIA would reflect the first six months or so, they would stabilize the situation and receive treatment. He envisioned a smaller caseload with closer relationships with Montana's mental health system.

SEN. ECK asked how the training for family therapists had worked. **Mr. Hudson** said some people who were FAIM coordinators had tremendous growth potential, but still needed training. Others were offered opportunities to return to strictly eligibility work. Then there were those who could not provide the intensive, in-the-home help some people needed; therefore, that service needed to be bought from the qualified family support people around the state. That was a budgeted item for the next biennium.

SEN. B.F. "CHRIS" CHRISTIAENS asked if the barriers were identified up front. **Hank Hudson** said the real identification of barriers came later, through the experience people had. It could be six months into the program before people were ready to talk. There was a need, though, for professional assessment services.

SEN. CHRISTIAENS asked at what point it went from a case manager to an intensive case manager situation. **Mr. Hudson** said at this point it did not happen; in fact, that was the missing service

and it needed to be in place to serve people with multiple sanctions.

SEN. CHRISTIAENS asked if the sanctions were standardized state-wide, or did they vary by region. **Hank Hudson** affirmed they were standardized.

{Tape : 2; Side : A; Approx. Time Counter : 17.7}

SEN. SUE BARTLETT asked how open the change process was to truly receiving, investigating, exploring and adopting the ideas which came from those outside the process. **Hank Hudson** said it was a diverse group which was pretty open. He said he was part of an organization where 95% of it was in the field. He was not comfortable with making changes without consulting the county directors because he wanted the changes to be supported through the system. Even though this bill would give the Department the authority to make the decisions, he felt much more comfortable if the people who would implement the decisions felt a part of the discussion. He said they had been trying to generate dialogue within their offices as well as with the communities so all would feel a part of the decision-making.

SEN. AL BISHOP asked if there was something in writing when an application was made. **Mr. Hudson** said the agreement looked like a contract and it set out each party's responsibilities. The responsibilities of the participants were somewhat greater than those of the state.

Closing by Sponsor:

SEN. EVE FRANKLIN acknowledged there were common goals to bring everyone to an agreement. She said when she was not serving in the legislature, she was a nurse who worked with people who came to her in a "crisis orientation", i.e. everything in their lives was a crisis. She could help them best by assisting them in making a transition from "everything was a crisis" to a different mode, where the decisions were based on something other than "crisis." She suggested sanctions reinforced "crisis orientation" and did not serve the aims of the FAIM program. She agreed people should understand consequences; however, the "crisis orientation" was just as true, and the choices made by people who did not have resources sometimes seemed foolish. **SEN. FRANKLIN** said her reality and access to resources was very

different from those who did not have resources, and that personal reality played a big part in making decisions. As to the statement that FAIM should look like life, she stated if she herself was late to work on a given day, her boss might reprimand her but she would probably not be fired for that one-time tardiness, or be docked that day's pay or lose her health benefits. She submitted FAIM was more of the crisis-orientation of the poverty culture and less of the reality orientation of people who were in the work culture.

She suggested working together on the legislation, basing the work on the nuances upon which they could agree, to draft amendments which could move them into the next phase with a sense of confidence. She said she would be happy to work with DPHHS to make it happen.

{Tape : 3; Side : A; Approx. Time Counter : 0}

HEARING ON SB 398

Sponsor: SEN. JOHN BOHLINGER, SD 7, Billings

Proponents: Linda Healow, Private Citizen
JoAnn Dotson, Department of Public Health & Human
Services
Pat Hennessey, Registered Dietitian
Lynn Cordiero, Private Citizen
Michelle Kippani, Private Citizen
Rebecca Moog, Montana Women's Lobby
Lesley Green, Private Citizen
Michelle Morris, Private Citizen
Chris Folgelman, Registered Dietician

Opponents: None

Opening Statement by Sponsor:

SEN. JOHN BOHLINGER, SD 7, Billings, said Linda Healow, a constituent and program administrator for continuing education for health care professionals in the western United States, asked him to carry this bill. He admitted he was reluctant at first, but he read the material given him by Ms. Healow, and found good solid reasons for breast feeding. They included: (1) Human milk was superior because it protected babies from infections and allergies, i.e. breast feeding enhanced the active immune system in the first years of one's life; (2) Protection against Sudden Infant Death Syndrome (SIDS); (3) Enhancement of infant's

cognitive development and intelligence; (4) Delay of mother's fertility; (5) Reduced chance of breast, uterine and ovarian cancer in the mother; (6) Less incidence of osteoporosis in the mother; (7) Reduction of hip circumference and regaining of pre-pregnancy weight; (8) Financial savings of \$800-\$1,200 per year.

He stated objections to breast feeding included mothers being told they could not breast feed their children in a public place, place of employment, etc. In fact, in some parts of the country the opinion was breast feeding was indecent and improper. He reported **SB 398** protected the right of a mother to nurse her child in public, prohibited a unit of local government from adopting an ordinance which would prohibit breast feeding in public and provided it may not be considered a nuisance, indecent exposure, sexual conduct or obscenity.

Proponents' Testimony:

Linda Healow, Private Citizen, said many health promotion organizations realized the vast advantages of breast feeding. She expanded on the information in **EXHIBIT (phs37a07)** and **EXHIBIT (phs37a08)** by saying "breast was best", according to the general public. She suggested it was in the best of Montana's families, mothers and children. The goals of "Healthy People 2000" included 75% of women bearing children would leave the hospital breast feeding, and 50% still nursing the babies when they were six months old. Montana was higher than average in meeting that goal, which could be attributed to education and life style. **Ms. Healow** said it was necessary to protect breast feeding, because in the Western world, breasts had both a nurturing and sexual connotation. It took a huge drop back in the 1940s and 1950s, which could be attributed to the increase in technology after World War II. This technology included marketing formula for feeding babies, and she admitted those bottle-fed babies thrived also. The trend slowly returned to breast feeding and now, women were able to get support from health care providers and a message that breast feeding was wonderful. However, when they left the hospital, the culture was not very supportive. She contended nursing mothers attempted to be discreet, but even so, sometimes they were asked to leave malls and other public places. Therefore, passing **SB 398** would reaffirm the appropriateness of breast feeding in public. Also, there was more nudity on magazine covers and TV than when a mother breast fed in public. She asked the Committee's support for **SB 398**.

{Tape : 3; Side : A; Approx. Time Counter : 12.1}

Jo Ann Dotson, Department of Public Health and Human Services (DPHHS), read her written testimony **EXHIBIT**(phs37a09).

Pat Hennessey, Registered Dietitian, read her written testimony **EXHIBIT**(phs37a10).

Lynn Cordiero, Private Citizen, said she agreed with everything said so far, and wanted to add that breast feeding financially benefitted families as well as all Montana citizens. Breast fed babies had significantly fewer common pediatric illnesses, which saved taxpayer money as well as parent frustration. She stated the best argument for supporting **SB 398** was legislation introduced last session would have allowed the arresting of mothers who were nursing in public. She addressed the concern this bill would legally allow a woman to intentionally expose her breasts in public, by saying such a woman would want to elicit a sexual response in a man. Also, this bill would only allow breast exposure if she had a baby in her arms and men would not find her sexually attractive if she was holding a baby. She maintained breast feeding was a gift of love from a mother to her baby, and that idea needed to be supported by our culture. She asked support for **SB 398**.

{Tape : 3; Side : A; Approx. Time Counter : 21.5}

Michelle Kippani, Private Citizen, said she was a wife and mother of three children. She had a passion for being a mother, and that passion was enhanced by her breast feeding her three children. She stated she was a member of many organizations which supported breast feeding and she had seen the benefits in mothers and babies from all walks of life. Some babies could not tolerate either the formula or pacifier, and those reasons were adequate to allow a mother to breast feed in public. She urged support for those mothers who chose to breast feed their babies. She distributed copies of **EXHIBIT**(phs37a11) and said the image came from an old, covered community bridge in Frederick, Maryland. The explanation for the image was the artist wanted images which represented the spirit of community, which began in the home with the mother-child relationship. Nursing was the bridge which connected the mother with the child.

{Tape : 3; Side : B; Approx. Time Counter : 0}

Rebecca Moog, Montana Women's Lobby, said they stood in support of the bill.

Lesley Green, Private Citizen, said there was no other way to vote for this bill, other than to support it. It was the only

natural way to feed a baby, and that could not be taken from them.

Michelle Morris, Private Citizen, said breast feeding was beneficial, both health-wise and in convenience, for the mother. She shared that Michael Jordan's mother had been asked to what she attributed his athletic greatness and she said it was three years of breast feeding.

Chris Fogelman, Registered Dietitian, said she supported **SB 398**.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. DON HARGROVE asked if the issue of the bill was a big problem. **Linda Healow** said it was, and shared an example of a nursing mother who was in her child's classroom. Her baby was hungry so she was asked to sit in the principal's office to nurse her baby.

Closing by Sponsor:

SEN. JOHN BOHLINGER left right after his opening statement, so there was no closing.

HEARING ON SB 438

Sponsor: **SEN. B.F. "CHRIS" CHRISTIAENS, SD 23, Great Falls**

Proponents: **Greg Lind, Anesthesiologist**
Joe Mazurek, Attorney General
Jim Smith, Montana State Pharmaceutical Association

Opponents: None

Opening Statement by Sponsor:

SEN. B.F. "CHRIS" CHRISTIAENS, SD 23, Great Falls, said the bill was a committee bill, whose drafting had been unanimously agreed upon.

Proponents' Testimony:

Greg Lind, Anesthesiologist, read his written testimony
EXHIBIT(phs37a12) and **EXHIBIT**(phs37a13).

Joe Mazurek, Attorney General, said **SB 438** was a slight tweak to a bill from last session, and was appropriate from the perspectives of both law enforcement and operations of the state crime lab.

Jim Smith, Montana State Pharmaceutical Association, said they supported the bill two years ago and did so again.

Opponents' Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. B.F. "CHRIS" CHRISTIAENS said the bill from the last session had unintended consequences, and **SB 438** was a correction.

EXECUTIVE ACTION ON SB 438

Motion/Vote: **SEN. FRANKLIN** moved that **SB 438 DO PASS**. Motion carried unanimously 9-0.

{Tape : 3; Side : B; Approx. Time Counter : 8}

HEARING ON SB 323

Sponsor: **SEN. STEVE DOHERTY, SD 24, Great Falls**

Proponents: **Joe Mazurek, Attorney General**
Jim Smith, American Cancer Society

Opponents: None

Opening Statement by Sponsor:

SEN. STEVE DOHERTY, SD 24, Great Falls, said the bill would submit a Constitutional amendment to the Montana electors, which would require the legislature to dedicate at least 50% of the tobacco settlement proceeds to a permanent trust fund. The principal would remain inviolate, unless appropriated by 3/4 of each House, and the interest would fund health-care programs. He said the legislature would define the health-care programs, and some suggestions would include tobacco addiction education and

prevention, tax credits or deductions to businesses which provided health insurance or improving access to people on Medicaid. He asked why the money should go into a trust fund and answered by saying caution should be exercised before the money was spent, because the money had not yet cleared the bank. He explained it was his understanding the \$832 million settlement over the years would depend on how much people smoked, because it would be funded through cigarette taxes. If there was an effective and prevention program, the return could be diminished. It was **SEN. DOHERTY's** desire to buffer the use of that money from the potential fluctuation. The trust fund would be flexible because up front, the money should be loaded into education and prevention, and as time went on, more of the money could be used for treatment. The fund was also sustainable because it seemed more college students were smoking now than before. He did not view the money as a windfall, but as payment for generations of Montanans suffering the ravages of tobacco.

Proponents' Testimony:

Joe Mazurek, Attorney General, said he supported **SB 323** and drew his testimony from **EXHIBIT (phs37a14)**. He agreed with using the money to fund public health and tobacco control programs and setting the rest aside. However, he was concerned the creation of a statutory trust was an illusion because it would be gone when the majority of the legislature saw the money and needed it. That was what had happened to all the statutory trusts so far, and this would be particularly bad because it was not based on a renewable resource. He felt it was very important to make a serious effort to fund it in the out years, because once it was over, anything set up would "go by the wayside." It was important to actually set up a Constitutional trust to accomplish it. He liked the idea of 50%, although it could be difficult to sustain, and if it was, the legislature could be the judge.

{Tape : 3; Side : B; Approx. Time Counter : 17.7}

Jim Smith, American Cancer Society, said they urged a comprehensive and sustained program of tobacco control and prevention. Many organizations had gotten together and developed an excellent comprehensive program, which would get to the airwaves, bill boards, schools, etc. How would such a program be sustained over the initial years of the settlement? He suggested **SB 323** was worth the Committee's serious consideration, as a way to address that concern.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. EVE FRANKLIN asked why the amount could not be 100%. **SEN. STEVE DOHERTY** said he thought that might be the wisest use of the money; however, the state had immediate needs. Therefore, the half-and-half split was a good compromise, and it would be in the form of a referendum which would be voted on by Montanans in the next election. Also, perhaps some tobacco money would come in before then so it would be wise to "jump-start" the fund from the beginning.

SEN. DON HARGROVE asked what the various proposals were, how they meshed or conflicted, etc. **SEN. DOHERTY** said there was not much conflict among the ideas for using the money, but the proportions might be different. **Nancy Ellery, DPHHS**, agreed many of the concepts were the same, but the proportions differed. In the other bill, 30% went to the General Fund for the offset of Medicaid expenditures, 15% for Children's Health Insurance (CHIPS), 33% to tobacco prevention activities and 22% to the Health & Long-term Care Trust Fund.

{Tape : 4; Side : A; Approx. Time Counter : 0}

SEN. DOROTHY ECK asked if 15% was needed for CHIPS. **Nancy Ellery** said in CHIPS, a portion went toward the increased Medicaid children's caseload, which would come about because of the extended outreach activities. Under the CHIPS program, a Medicaid-eligible child would use the Medicaid eligibility first.

SEN. SUE BARTLETT asked if the trust fund in the other bill was a statutory trust fund and **Ms. Ellery** affirmed.

SEN. FRED THOMAS asked why the tobacco money was awarded to the states. **Joe Mazurek** said Montana filed a suit against the tobacco companies here in Montana. Claims against the tobacco companies included unfair trade practices of consumer protection statutes, conspiracy in marketing fraud, amount Montana paid for Medicaid, potential punitive damages, etc. In other words, it was a claim directed at tobacco companies' practices over the past years, because it was proved they targeted 13-year-olds, even though they knew their products were dangerous. Their marketing schemes were aimed at "hooking" 3,000 teenagers per day, because they needed replacement smokers. All those reasons were used to agree on an amount which was allocated to the states, based on a formula.

SEN. THOMAS asked how important the Medicaid issue was in the settlement. **Mr. Mazurek** said it was a part, although they tried to be careful not to tie this to Medicaid, because 70 cents of every dollar could have gone back to the Federal Government. In fact, that was one reason why Montana did not get into the

lawsuit until later. At the Federal level, there was legislation to preclude them from taking the offset and discussion that as long as the money went for public health tobacco control purposes, the Federal Government would not assert claim against it.

SEN. THOMAS asked about the inclusion of \$20 million in the fiscal estimate for this biennium. **Joe Mazurek** said they were cautioning everyone not to spend this money before it was "in hand." The yearly pay-out schedule should be finalized by June, 2000; in fact, some funds had already been paid, were in escrow, but had not yet reached Montana. They would be delivered when 80% of the states, representing 80% of the Medicaid population, reached State Specific Finality. He said they were reasonably optimistic they would get the money as per the schedule, before the end of the biennium. **Chris Tweeten, Department of Justice**, said Montana's right to receive money under the settlement vested on February 5, which was when the time for taking appeal from the trial court's settlement approval, ran out. Therefore, Montana's settlement was final, but the money would not be released until 80% of the states, entitled to 80% of the settlement, reached that point. However, there was a provision whereby the money would be released to those states which achieved finality, even if that did not occur by June, 2000. They were confident Montana would receive the payments as set forth by the schedule, beginning no later than June, 2000. The reason for the \$20 million was because it was prudent to be conservative regarding the federal reimbursement claim. It was assumed there would be a 70% cut taken from the settlement, which left 30% in the revenue projections.

Closing by Sponsor:

SEN. STEVE DOHERTY said he sent a letter to President Clinton, and leadership drafted and signed a similar letter, which was sent to Congressional leadership. Both letters asked the Federal Government to "keep its fingers" off Montana's tobacco settlement money. He maintained it was necessary to exercise caution in how the money was dedicated and spent. He also contended over the years, the Federal Government encouraged smoking; therefore, the settlement belonged to the states because they took the lead to go after the tobacco companies. The big question, however, was: What will Montana do with this money for the next several generations? A permanent trust fund was the answer.

ADJOURNMENT

Adjournment: 6:15 P.M.

SEN. AL BISHOP, Chairman

MARTHA MCGEE, Secretary

JANICE SOFT, Transcriber

AB/MM

EXHIBIT (phs37aad)